

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 678 of 2005

Maharashtra Engineering Plastic
and General Kamgar Union .. Petitioner
versus
M/s.Chamundi Petroleum & two ors. .. Respondents

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Mr.A.D. Shetty with Mr.Thamnesh Shetty with Ms.Rita
Joshi for the petitioner.

Mr.Rahul Nerlekar for the respondent nos.1 and 2.

CORAM : D.G. KARNIK, J

DATED : 12th June 2006.

ORAL JUDGEMENT:-

1. This Writ Petition is directed against the judgement and order dated 20th December 2004 passed by the Industrial Court dismissing the complaint made by the petitioner Union against the respondent nos.1 and 2 (for short 'the respondents') of Unfair Labour Practice falling under item 1 and 6 of schedule II and item 6

and 9 of schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (for short 'the ULP Act').

2. The petitioner is an union registered under the Trade Unions Act 1926. Under its constitution as it stood at the relevant time, the respondent no.1 was allowed to represent workmen employed in several industries listed therein which did not include petrol pumps. The respondent no.1 is a partnership firm running a petrol dispensing outlet (for short 'petrol pump') and the respondent no.2 is its partner. On 5th June 1998, the petitioner filed a complaint on behalf of the employees of the respondents alleging that the respondents were committing Unfair Labour Practices under item 1 and 6 of schedule II and item 6 and 9 of schedule IV of ULP Act from 31st May 1998. The respondents filed a written statement denying the allegations of Unfair Labour Practices. They also contended that the petitioner union had no authority to represent the workmen and was not entitled to file and prosecute the complaint on their behalf. The Industrial Court held that the petitioner had no authority to represent the workmen of respondents. On merits, it held that the respondent no.1 had not

committed any Unfair Labour Practice as alleged by the petitioner. That decision is impugned in this petition.

3. As stated earlier, the petitioner is a trade union registered under the Trade Union Act 1926 and its affairs are governed by a written constitution, copy of which is filed along with a compilation in this petition. Under its constitution, the petitioner union is formed with a view to represent the workmen engaged several industries mentioned in Schedule-A to the constitution. Admittedly, petrol pump industry was not included in the schedule-A of the constitution of the petitioner when the complaint was filed. However, in the year 2002 that the constitution was amended to include "petrol pump" in the schedule-A and since then the petitioner is entitled to represent employees employed by a petrol pump. Learned counsel for the respondents submitted that on the date of the complaint i.e. on 5th June 1998, the petitioner was not authorised to espouse the cause of workmen employed in or by a petrol pump. The petitioner was therefore not entitled to file the complaint on behalf of the employees of the respondents. Per contra, learned counsel for the petitioner submitted that under section

28 of the ULP Act, any union, employee or investigating officer is entitled to file a complaint within 90 days of occurrence of any unfair labour practice. He submitted that it is not necessary that the complaint must be filed only by a recognised union or by an union which under its constitution is entitled to espouse the cause of the workmen concerned. It is true that a complaint can be filed on behalf of the workmen even by an unrecognised union and it need not be filed only as a recognised union except. However, section 28 cannot be so construed as to give right to any union which under its constitution is not authorised to represent a class of workmen to file a complaint on behalf of that class of workmen. The words "any union" appearing in section 28 of the ULP Act must be construed to mean a union which under its constitution is permitted or entitled to represent the workman or workmen concerned. It is not disputed that under its constitution as it stood in the year 1998, the petitioner union was not entitled to represent any workman employed by or in a petrol pump. If the petitioner was not entitled to represent any workman employed in a petrol pump under its constitution, there is no question of it representing the workmen and file the complaint under the ULP Act on their behalf. In my view, therefore,

the Industrial Tribunal was right in holding that the petitioner union had no authority to represent the employees.

4. Even on merits, I find no error in the impugned order. The substance of the complaint of the Unfair Labour Practices was that the respondents were paying to their workmen salary less than the minimum wages fixed under the Minimum Wages Act and that the respondents were also not giving their workmen benefits of Provident Fund, Employees State Insurance Scheme etc. The respondents produced before the Industrial Court the accounts as also the records, which show that the respondents paid the contributions under the ESIS Act and were also depositing the provident fund contributions regularly. They were paying salary not less than the minimum wages. The Industrial Court, after perusing the records has recorded a finding of fact that the respondents have not committed any Unfair Labour Practice. This finding is a finding of fact which is possible and certainly not perverse. In the absence of any perversity, it is not open for this Court to go into the correctness of the finding of fact.

5. Writ Petition is accordingly dismissed. Rule is discharged, with no order as to costs.

(D.G. KARNIK, J)